



Republican Policy Committee

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Rubin's Musings: Where Does He Go From Here?

Questions Arise About Future Pension Fund Tampering

[See also a related RPC paper, "Clinton's Disinvestment Strategy: Dishonest and Disingenuous," 12/5/95]

A new adventure in creative accounting began for President Clinton's Treasury Secretary last month when, after the President had vetoed a short-term debt limit extension and refused to sign the balanced budget bill with its long-term extension, the Secretary sought another route to continue the Administration's unconstrained deficit spending.

On November 15, he chose the path known as "disinvesting," which is really just — in the words of Senate Finance Committee Chairman Bill Roth — a raid of the pension plans of federal employees. By "disinvesting" (or prematurely redeeming securities from a federal employee trust fund), Rubin allowed for enough borrowing to keep the government afloat "through late December, or perhaps through January as well, based on his latest estimates to reporters."

Yet, not only would this tampering with retiree pension funds be illegal if the government had to live by the same laws as a private company — with possible penalties including jail-time — but future such tampering will raise significant legal issues, and further, they question the integrity of the federal retirement trust fund.

Disinvestment: An End-Run Around Fiscal Discipline

Here's how Secretary Rubin accomplished this end-run using Treasury securities held by the federal pension trust funds: First, Rubin authorized the "conversion to cash" of the entire \$21.5 billion of holdings in the federal employees' Thrift Savings Plan (TSP) by failing to reinvest these in Treasury securities when they matured. Second, he authorized the "disinvestment" of \$39.8 billion from the \$375 billion Civil Service Retirement and Disability Fund (CSRDF) by redeeming these securities prior to their maturity.

These actions allowed for the affected \$61.3 billion in funds to be placed into an escrow-like, noninterest earning account, which technically means they are no longer defined as debt. By no longer being defined as debt, *the overall level of debt is artificially lowered* by \$61.3 billion, thus freeing up debt-issuing authority of the same amount. Finally, new debt up to the level of the disinvested amount is issued and the money raised is used for more spending.

Mr. Rubin, What Do You Say?

Thus, the debt level effectively has been artificially lowered due to Secretary Rubin's "disinvestment" actions and the government continues to borrow and accumulate debt unabated, just as if the debt ceiling had been raised. Technically, the action thus far appears to be within the bounds of law. However, it is nonetheless troubling for a number of reasons, not the least being the treatment of the federal retirees' pension funds.

The Clinton Administration should answer now:

- What is the sole purpose of the federal retiree trust funds which are being disinvested?
- Is this disinvestment strategy being used solely to provide benefits for retirees?
- Would any further disinvestment take place only for the purpose of providing retiree benefits, or would it be used to finance further deficit spending?

The Extent and Intent of the Legal Authority for Disinvesting

Because these means to avoid the debt limit are unprecedented, Secretary Rubin is charting new territory. A critical issue is how much can he borrow from such trust funds, and for how long, although it appears that Rubin has already found answers for these questions.

Rubin himself acknowledged the legal concerns surrounding his avoidance of the debt limit in an October 31, 1995, letter to Senate Majority Leader Dole, in which he outlined his options in the event the President did not sign the debt limit increase:

"Finally, you should know that there are various other measures Treasury has been reviewing to avoid default. . . including actions involving the Civil Service Retirement Fund, but all such measures present uncertainties involving serious legal and practical issues. . ."

Secretary Rubin's ability to pursue the disinvestment strategy comes to him under authority granted by Pub. L. 99-509 (codified at 5 U.S.C. §8348). This provision provides him limited authority to disinvest only from the federal employees' retirement fund (CSRDF), by allowing him to "suspend additional investment in the [CSRDF] fund if necessary to ensure that the public debt of the United States does not exceed the debt limit." The Secretary's authority to disinvest from this trust fund is further defined:

"The Secretary may sell or redeem securities, obligations, or invested assets of the Fund. . . only during a debt issuance suspension period and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related

provisions of law during such period. A sale or redemption may be made even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner."
[Id. at §8348(k)(2), emphasis added]

Thus, Treasury Secretary Rubin chose to disinvest \$39.8 billion from the fund because that amount is equal to the amount needed to pay pension benefits for retirees for one year. He included with his disinvestment announcement an official "finding" that he believed Congress might not raise the debt ceiling until after the November elections, one year away, which then gave him the authority to disinvest one year's worth of payments. Bear in mind, however, that the funds were not authorized for the payment of pension benefits, but are simply the Secretary's means to keep from bumping against the debt ceiling.

Rubin appears to acknowledge this limit on his ability to tap into the retirement funds further. In his November 1, 1995 letter to Majority Leader Dole and Speaker Gingrich, he repeats the operative portion of the law:

"Fund assets could be sold only during such period, and only 'to the extent necessary to obtain any amount of funds' not exceeding the amount equal to the total amount of the benefit payments authorized to be made from the Fund during the period of debt issuance suspension."

With regard to **the use of the affected funds**, a Congressional Research Service (CRS) study notes that the language makes clear that "the purpose for which the proceeds of sales or redemptions are to be utilized *is not specifically limited to the payment of benefits due under the program* [CRS Report 95-1109 A, "Authority to Tap Trust Funds and Establish Payment Priorities if the Debt Limit is Not Increased," 11/9/95, p. 4]. And yet, while the use for the funds is not specified by the above language, **the rationale** for which it may be raised is very specific: it is to be equal to the amount of funds necessary to pay benefits during the period of debt issuance suspension.

In short, the intent of the legislation — and Secretary Rubin's interpretation of it — makes clear that the legislative authority used by the Clinton Administration to disinvest cannot be used indefinitely to continue deficit spending.

Whither Now, White House?

The White House, apparently having taken the all the steps allowed by the law that grants disinvestment authority under the aforementioned constraints, now must consider where to go from here. Secretary Rubin on November 15 announced that the amount he was authorizing for disinvestment would allow him to continuing issuing debt only until late December. Now, he's upped that estimate to late January, but the next step is still surely being considered.

When the Clinton Administration made its initial request for a short-term debt limit extension it requested \$67 billion, an amount it then estimated would be sufficient to get us into January. The amount of additional borrowing authority allowed by the November 15 disinvestment was \$61.3 billion — \$5.7 billion below this amount. Considering this, the Administration should explain now what they intend to do when their own stated deadline is reached; and how much borrowing authority they still have left from the November 15 disinvestment authorization.

Another issue relates to the question of how further disinvestment would be justified if it is pursued. In order to make further use of the disinvestment mechanism, **the Treasury Secretary would have to declare that the suspension of debt issuance were likely to extend beyond November 1996.** However, there are serious problems with this approach.

- While disinvestment is permissible under the conditions earlier outlined, the Secretary would have to explain why he was **further extending the debt issuance suspension period** of one year that he announced less than one month ago.
 - Specifically, is he stating that the Administration has no intention of producing the seven-year balanced budget scored by the nonpartisan Congressional Budget Office that the President agreed to when he signed the bill that allowed the government to continue operating last month?
- Why is a further extension necessary since a debt limit increase is generally contained in the annual budget, which the President is required to submit next February?
- Such a declaration by the Secretary, coming prior to the one-year period earlier declared would be highly suspect if it was said only to cover beneficiary claims, which were ostensibly taken care of through November 14, 1996.
 - This would certainly contradict the law's intention to provide and protect the benefit payments to retirees.
 - **It would instead extend disinvestment to allow for continued deficit spending — something no one would legitimately believe was the intent.**
 - This would furthermore extend the President's power because it would ***effectively allow him to borrow and spend without congressional approval.***

Civil Service Trust Fund: Why Treat it Differently Than Social Security?

Secretary Rubin's actions strongly indicate a willingness to disregard the trust fund's purpose of providing retiree benefits, and to ignore the law's intention to allow disinvestment only to pay benefits to beneficiaries during a debt issuance suspension. They even suggest a willingness on the part of this Administration to unilaterally set federal borrowing and spending policy.

This interpretation can be made from Secretary Rubin's statement on November 15 that the disinvested amounts "enable operations to go forward through late December." The "operations" to which he refers is federal borrowing, **not** the payment of retirement benefits. His approach to the CSRDF trust fund is in direct contrast to what he said in the same letter regarding Social Security funds — they "will be used only to pay benefits to Social Security recipients."

Another Way Out

It should be remembered that none of these questionable steps would be taking place had not President Clinton vetoed both a short-term debt limit increase and a long-term debt limit increase.

In his statement issued November 15, Rubin asserted, "It is my responsibility as Treasury Secretary to do everything in my power to avoid default." If he really wanted to make good on that, perhaps he should have a little chat with his boss to discuss with him the benefits of reaching a real seven-year balanced budget — now, before any more questionable gimmicks need to be employed.

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